

Serial No. 09/802,631

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portion, said attachment accomplished by application of pressure or application of heat to said end portion.

Please cancel ~~claims~~ 4, 5, 10, 11 and 12.

A version of the claims of the present application specifically showing the amended language is attached to this amendment.

REMARKS

Claims 1-3, 6-9 and 13 remain in the present application.

Claims 1 and 7 have been amended to more specifically define that the food strip material utilized in the present invention is made from either a fruit-based material or a candy-based material (antecedent basis at page 1, lines 13-17, and page 2, lines 19-21 of the present application), and to clarify that the food strip roll is tacked together either through the application of heat or the application of pressure to the roll (antecedent basis at claims 4, 5, 11 and 12 of the present application as filed). In light of these amendments to the claims, claims 4, 5 and 10-12 have been canceled as being redundant.

The present invention relates to confectionery articles which comprise a strip of fruit or candy material which is formed into a roll, the end of the roll being tacked to an inner layer of the roll through the application of heat or pressure to the outer layer of food material. The article provides a candy or snack item in a form which is viewed very positively by the consumer, particularly children. The method of forming these rolled food products is already covered in U.S. Patent 6,200,617, issued March 13, 2001.

The Examiner has rejected all of the claims currently pending in the present application, under either 35 U.S.C. § 102(b) or § 102(e), based on one or more of the following patents: U.S. Patent 2,352,617 (Cohen et al.); U.S. Patent 4,110,482 (Sato); U.S. Patent 5,348,751 (Packer et al.); U.S. Patent 5,853,836 (Zoss); and U.S. Patent 6,010,730 (Okaizumi et al.). In light of the amendments made herein and the comments below, those rejections are respectfully traversed.

The Cohen et al., Sato, Packer et al. and Okaizumi et al. patents all deal with forming rolls from uncooked dough. None of those references contain any suggestion to use anything other than uncooked dough, and the devices they describe are specifically adapted to the stretch and elasticity characteristics of uncooked dough. The claims of the present

application, as amended herein, do not relate to uncooked dough, but rather relate to food items formed from fruit-based or candy-based materials. Such materials have wholly different handling characteristics than uncooked dough. Accordingly, the teachings of the Cohen et al., Sato, Packer et al. and Okaizumi et al. patents are not relevant to the claims, as amended herein.

The Zoss patent describes a rolled product made from a fruit material. This fruit material strip includes a support layer above or below it (such as waxed paper), and it is then rolled up into a spiral roll. The support material is layered into the rolled-up product in Zoss. The spiral rolls formed in Zoss are held together using a specially designed label; the adhesive used to hold the roll together is on the label, not on the food material. The entire purpose of the Zoss invention is to avoid the use of other methods of tacking the roll together. Specifically, Zoss very generally teaches the use of edible adhesives, such as corn syrup, to tack a food roll together; however, Zoss teaches that this is unsatisfactory as adhesives are messy and difficult to work with. The entire purpose of Zoss is to avoid the use of such adhesives. The claims of the present application clearly differ from the teachings of Zoss for at least two very specific reasons:

- (1) The claims of the present application require that the food material rolls be tacked by the application of heat or pressure to the end of the roll. Zoss does not teach tacking by the application of heat or pressure and, in fact, uses a label band around the roll to hold the roll together.
- (2) The claims of the present application require that the end of the roll be tacked onto a food layer directly adjacent and under said roll end. The claims of the present application do not permit the interspersing of a support layer within the food material roll, since if such material was interspersed, the two food layers could not be directly tacked together, as is required by the claims of the present invention.

The Zoss patent neither suggests the use of tacking by the application of pressure or heat, or a roll which does not include a support layer interspersed therein. Therefore, Zoss neither discloses nor suggests the invention claimed in the present application.

In light of the foregoing amendments and remarks, it is submitted that the rejections under 35 U.S.C. § 102 have been overcome, and it is respectfully requested that they be withdrawn.

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It is submitted that the claims of the present application, as amended herein, are now in form for allowance. Accordingly, reconsideration and allowance of those claims are earnestly solicited.

Respectfully submitted,

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<p><u>CERTIFICATE OF MAILING</u></p> <p>I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to The Assistant Commissioner for Patents, Washington, D.C. 20231, on</p> <p><u>Nov. 13, 2012</u></p> <p><u>Sarah Ohlweiler</u></p> <p>Sarah Ohlweiler</p>

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Appendix A
Marked Version Showing Changes Made

Claims 1 and 7 are amended as follows:

Claim 1 (amended) An item comprising:

a food strip selected from fruit-based materials and candy materials, having an outer surface and a length defined by a leading end and a trailing end, the strip being rolled around the leading end into a roll having multiple rotations to define two or more layers lying in contact with each other; and

a tacked region on the strip about the trailing end that attaches two of the layers together, said tacked region attached by application of pressure or application of heat to said rolled food strip.

Claim 7 (amended) An article of manufacture comprising a substantially spirally wound strip of pliable food material, said material selected from fruit-based materials and candy materials, having an end portion attached to another portion of the strip proximate to the end portion, said attachment accomplished by application of pressure or application of heat to said end portion.

Claims 4, 5, 10, 11 and 12 are canceled.